

## Message Text

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C O N F I D E N T I A L STATE 069924

E.O. 11652: GDS

TAGS: MILI, ELAB, IT

SUBJECT: LABOR RELATIONS PROBLEMS OF U.S. FORCES IN ITALY

REFS: ROME 4198 AND 3520

1. COMPLEX LEGAL AND PROCEDURAL DIFFICULTIES SURROUNDING  
LABOR RELATIONS OF U.S. FORCES IN ITALY SET FORTH REFTELS  
HAVE BEEN DISCUSSED AMONG DEPARTMENT, DEFENSE AND JUSTICE.  
THIS MESSAGE CONVEYS PRELIMINARY VIEWS AS TO HOW THEY  
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MIGHT BE APPROACHED, AND IS SENT AS BACKGROUND FOR MEETING  
OF U.S. OFFICIALS IN ITALY WHICH WE UNDERSTAND MAY TAKE  
PLACE THIS WEEK.

2. NUB OF THE PROBLEM, AS WE SEE IT, IS CONTINUED REFUSAL  
OF ITALIAN COURTS TO GIVE EFFECT TO INTERNATIONAL AGREE-  
MENTS ENTERED INTO BY GOI BUT NOT ENACTED INTO DOMESTIC

LAW BY PARLIAMENT. IN THIS CONTEXT, WE ARE INCLINED TO REGARD MANZARI INITIATIVE IN RAISING SUBJECT WITH EMBASSY AS WELCOME DEVELOPMENT, WHICH BOTH SIDES COULD USE TO MOVE OUT OF STERILE AND INCREASINGLY EXPENSIVE LABOR LITIGATION, WHICH COULD OTHERWISE BECOME A SIGNIFICANT IRRITANT IN OUR BILATERAL RELATIONS.

3. ONE BASIC POINT IS THAT WE DO NOT WISH TO ALTER PRESENT ABILITY OF U.S. FORCES TO SELECT MOST DESIRABLE METHOD OF OBTAINING LABOR SERVICES (THROUGH DIRECT HIRE OR BY CONTRACT), DEPENDING ON NATURE OF THEIR REQUIREMENTS AND PARTICULAR CIRCUMSTANCES INVOLVED. NEITHER WOULD WE WISH, IN LIGHT OF RECENT EXPERIENCE ELSEWHERE, TO ADOPT AN INDIRECT HIRE SYSTEM UNDER WHICH GOI WOULD EMPLOY THE PERSONNEL AND MAKE THEM AVAILABLE TO U.S. FORCES AS NEEDED. THIS TENDS TO BECOME BOTH EXPENSIVE AND INFLEXIBLE, MAKING IT MORE DIFFICULT TO CARRY OUT NECESSARY RIFS OR OTHER PERSONNEL ADJUSTMENTS AND TRANSFERS.

4. FROM U.S. STANDPOINT, MOST SIGNIFICANT EXISTING AGREEMENTS, ON WHICH WE WISH TO RELY, ARE 1954 BILATERAL INFRASTRUCTURE AGREEMENT AND 1957 UNDERSTANDING ON POLICIES CONCERNING RECRUITMENT OF LABOR. 1954 OFF-SHORE PROCUREMENT AGREEMENT IS ALSO RELEVANT. HOWEVER, UNWILLINGNESS OF ITALIAN COURTS TO GIVE DOMESTIC LEGAL EFFECT TO THESE AGREEMENTS HAS LED TO PRESENT SITUATION, WITH INNUMERABLE JUDGMENTS BASED ON PREMISE THAT ITALIAN LABOR LAW MUST GOVERN. TO OVERCOME THIS, WE SEE FOUR

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OPTIONS THAT MIGHT BE PURSUED:

(A) ESTABLISH BY AGREEMENT A NEW BILATERAL CONSULTATIVE BODY OR JOINT COMMITTEE TO HANDLE LABOR MATTERS, WHOSE TERMS OF REFERENCE COULD THEN BE RATIFIED BY PARLIAMENT. THESE WOULD HAVE TO STIPULATE THAT THE NEW ORGANIZATION WILL BE GOVERNED BY APPLICABLE AGREEMENTS IN FORCE BETWEEN THE TWO GOVERNMENTS, WHICH MIGHT BE TANTAMOUNT TO A RATIFICATION OF THOSE AGREEMENTS. NEW ORGANIZATION WOULD BE A TECHNICAL BODY, BELOW DIPLOMATIC LEVEL, EMPOWERED TO SETTLE DISPUTES WHICH CANNOT BE RESOLVED THROUGH NORMAL NON-JUDICIAL GRIEVANCE OR LABOR RELATIONS PROCEDURES.

(B) ENTERING INTO A NEW AGREEMENT WITH THE GOI ON LABOR RELATIONS OF U.S. FORCES, FOR SUBSEQUENT PARLIAMENTARY APPROVAL. NEGOTIATION OF SUCH A DOCUMENT WOULD OBVIOUSLY BE A LENGTHY TASK, BUT IT MIGHT PROVE MORE LASTING THAN OPTION (A) ABOVE.

(C) REQUESTING THE GOI TO INSURE THAT U.S. FORCES ARE NOT HELD TO A GREATER DEGREE OF COMPLIANCE WITH ITALIAN LABOR LAWS THAN INSTRUMENTALITIES OF THE GOI ITSELF. WHILE WE UNDERSTAND THAT SUCH A DEMARCHE WAS UNSUCCESSFULLY MADE LATE LAST YEAR, MANZARI'S CURRENT INTEREST IN THE PROBLEM MIGHT AUGUR A MORE FORTHCOMING RESPONSE.

(D) PROPOSING THAT THE ITALIAN PARLIAMENT IMPLEMENT APPLICABLE PROVISIONS OF EXISTING AGREEMENTS WITH THE U.S., WITHOUT ESTABLISHING THE CONSULTATIVE MACHINERY IN OPTION (A) ABOVE.

5. FOREGOING REPRESENTS ONLY OUR PRELIMINARY COMMENTS, OFFERED FOR CONSIDERATION AT FORTHCOMING MEETING OF U.S. OFFICIALS IN ITALY CONCERNED WITH LABOR RELATIONS MATTERS. CONFIDENTIAL

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6. WITH REGARD TO PARA 2.C. ROME 4198, DEPARTMENT OF JUSTICE ADVISES THAT MOST LABOR SUITS IN ITALY HAVE TRADITIONALLY INVOLVED ARMY EMPLOYEES (IN VARIOUS TRIBUNALS OF PISA, VICENZA AND LIVORNO) AND NAVY EMPLOYEES (USUALLY IN TRIBUNALS OF NAPLES, AND OCCASIONALLY IN CATANIA), ONLY RECENTLY HAVE INSTRUMENTALITIES OF THE AIR FORCE GENERATED LABOR SUITS (IN BRINDISI AND MARTINA FRANCA).

7. DOJ RETAINS TWO PRINCIPAL LOCAL LAW FIRMS TO REPRESENT USG BEFORE ITALIAN TRIBUNALS: STUDIO LEGALE GELATI AT LIVORNO FOR SUITS IN PISA-VICENZA-LIVORNO AREA, AND STUDIO LEGALE ARDITO OF ROME IN ROME-NAPLES AREA. BOTH FIRMS FULLY MEET DOJ'S MANDATORY REQUIREMENTS FOR FOREIGN COUNSEL: EXPERIENCE AND PROFESSIONAL REPUTATION; KNOWLEDGE OF ENGLISH; FAMILIARITY WITH AMERICAN LAW; AND NO AFFILIATION WITH POLITICAL MOVEMENTS EMBARRASSING TO U.S. BOTH FIRMS HAVE REPEATEDLY REPRESENTED USG IN LABOR MATTERS BEFORE ITALIAN SUPREME COURT AND IN HUNDREDS OF CASES AT ALL APPELLATE AND TRIAL LEVELS. IN ROUTINE CASES, FIRMS MAY ON OCCASION RETAIN LOCAL CO-COUNSEL, BUT LEGAL BRIEFS AND PLEADINGS ARE INVARIABLY DRAFTED IN HOME OFFICES OF FIRMS. IN ITALY, AS IN MOST CIVIL LAW COUNTRIES, CIVIL CASES ARE DISPOSED OF PRIMARILY ON BASIS OF DOCUMENTARY EVIDENCE AND COUNSEL SUBMISSIONS; HENCE THE CRUCIAL IMPORTANCE OF LITIGATION REPORTS PREPARED BY DOJ CLIENT AGENCIES AND DEFENSE COUNSEL BRIEFS.

8. DOJ IS SATISFIED THAT GELATI AND ARDITO FIRMS FURNISH USG WITH FOREMOST LEGAL REPRESENTATION AND UNMATCHED

EXPERIENCE. DOJ WILL BE PLEASED TO CONSIDER ANY  
RECOMMENDATIONS FROM EMBASSY OR CLIENT AGENCIES WHICH  
MIGHT FURTHER IMPROVE US REPRESENTATION BEFORE ITALIAN  
TRIBUNALS. HOWEVER, DOJ LONG AGO CONSIDERED, AND  
DISMISSED AS INEFFECTIVE AND WASTEFUL, RETAINING AD HOC  
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COUNSEL IN EACH PROVINCIAL JURISDICTION. LOCAL COUNSEL  
MUST FREQUENTLY BE RETAINED ON SHORT NOTICE, AND MUST  
BE IN POSITION TO APPEAR AND FILE U.S. SUBMISSIONS IN  
A MATTER OF DAYS. ASIDE FROM DIFFICULTY OF FINDING  
IN PROVINCES LOCAL COUNSEL WHO WOULD MEET PROFESSIONAL  
CRITERIA NOTED ABOVE, IT WOULD BE IMPRACTICAL TO ATTEMPT  
TO INSTRUCT NEW COUNSEL ON COMPLEXITIES OF GOVERNMENT

LITIGATION, U.S. LAWS, REGULATIONS AND PRACTICES, RELEVANT  
INTERNATIONAL AGREEMENTS, AND ITALIAN CASE LAW. THE  
GELATI AND ARDITO FIRMS, BASED ON THEIR CUMULATIVE  
EXPERIENCE, ARE ABLE TO PRODUCE COMPREHENSIVE BRIEFS  
ON SHORT NOTICE, WITHOUT NEED ON PART OF DOJ TO INSTRUCT  
THEM ANEW ON THE MANY LEGAL AND POLICY ISSUES WHICH BEAR  
UPON EACH ITEM OF GOVERNMENT LITIGATION.

9. DOJ ADVISES THAT IN BOTH FOREIGN AND DOMESTIC  
LITIGATION IN U.S. ATTORNEY GENERAL STATUTORY AUTHORITY  
TO PROVIDE LEGAL SERVICES TO AGENCIES AND INSTRUMENT-  
ALITIES OF USG IS LIMITED TO ACTUAL LAWSUITS. GENERAL  
LEGAL ADVICE OR LEGAL SERVICES DESIGNED TO IMPLEMENT  
AN AGENCY MISSION MUST BE FURNISHED BY GENERAL COUNSEL,  
LEGAL ADVISERS OR JUDGE ADVOCATES GENERAL OF THE IN-  
DIVIDUAL DEPARTMENTS OR MILITARY SERVICES.  
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